

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 19, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Lherisson) *BZ SC RA*
Office of Consumer Assistance and Outreach (Hicks, Plescow) *JP*
Division of Economics (Coston) *WR*

RE: Docket No. 20190216-EI – Complaint by Belkys Armenteros against Florida Power & Light Company regarding backbilling for alleged meter tampering.

AGENDA: 03/31/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 1, 2019, Ms. Belkys Armenteros filed an informal complaint with the Florida Public Service Commission (Commission) against Florida Power & Light Company (FPL or Utility).¹ In her informal complaint, Ms. Armenteros alleged that she was improperly back billed for up to 48 months of usage, for a total of \$11,545.44. Although FPL had found that her meter had been tampered with, Ms. Armenteros alleged that she did not tamper with the meter and wanted an explanation as to why her current kilowatt hour (kWh) usage is the same as her usage prior to the back billing.

By letter dated November 12, 2019, staff advised Ms. Armenteros that her informal complaint had been reviewed by the Commission's Process Review Team (PRT), in accordance with Rule

¹ Complaint Number 1311952E.

25-22.032, Florida Administrative Code (F.A.C.), and it appeared that FPL had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Ms. Armenteros that if she disagreed with staff's complaint conclusion, she could file a petition for initiation of formal proceedings for relief against FPL.

Ms. Armenteros filed a formal complaint against FPL on December 11, 2019, pursuant to Rule 25-22.036, F.A.C. In her complaint, Ms. Armenteros denies any knowledge of meter tampering that led FPL to disconnect her service on June 4, 2019. She also stated that her current kWh usage is the same as the 48 months that FPL alleged she benefitted from 49.99% kWh meter readings. Ms. Armenteros stated she was forced to open another account with FPL and paid \$6,743.00 to restore her service.

On February 17, 2020, staff sent a letter to Ms. Armenteros requesting any additional information or documentation that might assist the Commission in addressing her complaint. Staff did not receive a response from Ms. Armenteros.

Ms. Armenteros requests for the Commission to find that FPL incorrectly back billed her account and to require FPL to give Ms. Armenteros a credit adjustment of \$11,545.44. This recommendation addresses the appropriate disposition of Ms. Armenteros's complaint against FPL. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: What is the appropriate disposition of Ms. Armenteros's formal complaint?

Recommendation: Staff recommends that Ms. Armenteros's formal complaint be denied. Ms. Armenteros's account was properly back billed in accordance with Florida statutes and rules and FPL's tariffs. FPL did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Ms. Armenteros's account. (Lherisson)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. Ms. Armenteros's petition fails to show that FPL's back billing of her account violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Ms. Armenteros's petition for relief.

On August 20, 2003, Ms. Armenteros established an account for electric service with FPL at her residence. On July 21, 2011, FPL installed smart meter ACD3449 at Ms. Armenteros's residence. On March 18, 2019, FPL reviewed the communication from smart meter ACD3449 and found a drop in consumption occurred on September 19, 2014. On March 25, 2019, FPL replaced meter ACD3449 with meter ACD3876. An inspection of meter ACD3449, on March 25, 2019, revealed that the meter's inner seal was missing; the meter had been internally tampered by manipulating the current transformer (CT) wires (one of the two CT wires had been cut); and the meter test results showed Full Load (FL) at 49.84%, Light Load (LL) at 49.84%, and Weighted Average (WA) at 49.83%.

On May 31, 2019, a review of the data collected from Ms. Armenteros's meters indicated that consumption dropped on September 19, 2014, and increased after the new meter was installed on March 25, 2019. FPL back billed Ms. Armenteros's account for 48 months using the results of the meter test (WA 49.83%), and billed Ms. Armenteros for the 50.17% kWh difference that did not register on the meter due to the unauthorized condition.

Ms. Armenteros's bill for the billing period April 30, 2015, through March 29, 2019, totaled \$10,043.34. That bill was canceled by FPL and rebilled as \$20,860.60, a difference of \$10,817.26. FPL's revenue protection investigation classified the unauthorized condition of meter ACD3449 as non-inherited since Ms. Armenteros established the account in August 2003 and the meter tampering occurred in September 2014. As a result, investigation charges totaling \$528.18 and a tampering penalty of \$200 were also billed to Ms. Armenteros's account, bringing the total back billed amount to \$11,545.44.

On June 04, 2019, according to Ms. Armenteros, her service was disconnected without notice due to meter tampering. That same day, Ms. Armenteros spoke with FPL revenue protection investigator Ms. Ramos regarding the revenue protection investigation and the back bill. Ms. Ramos offered to reconnect Ms. Armenteros's service after a payment of \$8,500.00, and offered a payment arrangement for the remainder of the back bill with applicable late payment charges. Ms. Armenteros denied tampering with the meter, advised she would seek legal assistance, and ended the call. FPL reported that later that day, the account was accessed online and a request

was made to close the account as of June 04, 2019. A final bill was issued for \$11,552.66. Included in the final bill were: final bill charges of \$44.79 for service used from May 31, 2019, to June 04, 2019; a previous balance from her May 2019 bill of \$338.32; back bill charges of \$11,545.44; a \$369 deposit refund; and a \$6.89 deposit interest credit.

On June 05, 2019, Ms. Armenteros contacted FPL Customer Care Center and requested to open an account at her address in her son's name or the name of a tenant living at the property. She was advised that her request would be referred to FPL's revenue protection investigation department for investigation and response. On June 06, 2019, FPL contacted Ms. Armenteros and explained that a new account could not be established at the residence for another current occupant² and offered to reconnect the service and open a new account in Ms. Armenteros's name with an initial payment of \$5,500. Ms. Armenteros denied tampering with the meter and stated that she should not be held responsible for the back bill. FPL reiterated that the Utility was not accusing her of tampering with the meter and was simply holding her responsible for the unmetered electric use.

On June 07, 2019, FPL received a payment of \$5,500, leaving a final bill balance of \$6,052.66. Service was reconnected and a new account was established at the same address, in the name of Belkys Armenteros. A \$1,243.01 deposit bill, with a due date of June 17, 2019, was issued representing two months of electric use at the property because of the revenue protection back billing. A \$12 service charge was also issued, bringing the balance on the new account to \$1,255. On June 07, 2019, Ms. Armenteros contacted FPL and requested a payment arrangement for the deposit. A payment arrangement was established for the deposit to be paid in two installments: \$621 by June 17, 2019, and \$622.01 by June 29, 2019. Ms. Armenteros also requested an account audit of her final billed closed account. On June 15, 2019, FPL mailed a 24-month audit to her.

On June 17, 2019, FPL received payments totaling \$621, leaving a balance of \$634.01 on the new account. On June 28, 2019, a regular bill was issued for \$863.10, with a due date of July 22, 2019. Included in the regular bill were new charges of \$229.09, a \$12 service charge, and the remaining deposit balance of \$622.01.

On July 1, 2019, Ms. Armenteros contacted FPL questioning the time frame it took FPL to identify meter tampering and requested the results of the investigation and an audit of her payments. That same day, Ms. Armenteros filed two informal complaints with the Commission, one regarding the back bill balance on her closed account (Complaint 1311952E) and one regarding the deposit of her active account (Complaint 1311954E). FPL contacted Ms. Armenteros to discuss her deposit concerns, and as a courtesy, reduced the deposit from \$1,243.01 to \$768, with the understanding that future payments would be received by the due date. The \$475 deposit reduction resulted in a remaining account balance of \$388.09. FPL advised Ms. Armenteros that the remaining deposit balance of \$147.01 was past due.

On July 2, 2019, FPL contacted Ms. Armenteros and provided the sequence of events that led up to the back billing of her account, the meter test results, and the rebilling of the account using the meter test results. In addition, FPL explained that the back billed amount she was paying for is

² See Rule 25-6.105(8)(a), F.A.C.

half of the kWh usage since September 2014; however, the account was only back billed 48 months instead of the 54 months of unauthorized use. Ms. Armenteros requested a billing and payment audit, and copies of the meter tests performed before the meter was installed at her residence and after it was removed.

On July 3, 2019, FPL mailed the following to Ms. Armenteros: a billing audit from July 31, 2014, to May 31, 2019; a payment audit from July 25, 2014, to May 19, 2019; the meter tests for meter ACD3449; a copy of the notice left at the residence on June 4, 2019; and the data analytic graphs showing a drop in usage in 2014.

On July 4, 2019, FPL received a payment of \$147.01, leaving a balance of \$241.08 on Ms. Armenteros's active account. From July 5, 2019, to July 8, 2019, the total final bill balance of \$6,052.66 was transferred from Ms. Armenteros's closed account to her active account, bringing the balance of her active account to \$6,293.74.

On July 18, 2019, FPL contacted Ms. Armenteros and reminded her that her current bill for \$241.08 would become past due after July 22, 2019. In addition, FPL explained that a payment arrangement would be established for the transferred balance of \$6,052.66 to be paid in 24 monthly installments with applicable late penalty charges. The payment arrangement was established to commence with the August 2019 bill.

On August 7, 2019, a home energy survey was performed at Ms. Armenteros's residence. A load test was conducted on the A/C, five window A/C units, an electric water heater, and pool pump. The survey showed that the whole house energy usage was more than twice the usage of the 326 nearby homes of similar housing type, size, and appliances. Also, the A/C split was lower than the 14+ degrees recommended, causing the A/C to operate for longer periods of time. The home energy survey results were mailed to Ms. Armenteros with a letter reiterating the charges in her July 2019 bill, and stating that a \$40 returned payment charge was issued after the payment of \$622.01 was stopped and returned. The letter also stated that on July 8, 2019, the total of \$662.01 was transferred to the new account and that on July 17, 2019, the \$40 returned payment charge was credited. In addition, on August 1, 2019, the \$81.46 in late fees and the \$12 service charge for establishing a new account were also credited, yielding a balance of \$999.79 due on August 20, 2019. The account total balance was \$6,430.44 on August 20, 2019.

On August 30, 2019, Ms. Armenteros contacted Commission staff to request that her current meter (ACD3876) be tested because she believed that it was not accurately measuring her consumption. On September 12, 2019, the current meter ACD3876 on Ms. Armenteros's property was replaced with meter ACD1785. On September 19, 2019, both removed meters (ACD3449 and ACD3876) were tested in the presence of FPL's and Commission's staff. FPL's meter tests revealed that meter ACD3449 was registering a WA of 49.77%, and meter ACD3876 a WA of 99.95%. The Commission staff's meter tests revealed that meter ACD3449 was registering a WA of 49.84%, and meter ACD3876 a WA of 99.94%.

On September 26, 2019, FPL confirmed in a report that on September 25, 2019, at Ms. Armenteros's request, her account was removed from Ebill and that she would be receiving paper bills and final notices by regular mail. The same day, two late payment charges totaling \$179.36 were canceled, leaving a remaining unpaid back bill balance of \$5,429.92. In addition,

the previous payment arrangement was canceled and the unpaid back bill balance was temporarily deferred, pending the resolution of the complaint. On October 19, 2019, Ms. Armenteros paid \$375.66 in current charges of her October 2019 bill, which was due on October 21, 2019. As of October 21, 2019, the account has a protected balance³ of \$5,429.92.

Staff analyzed the information received from both Ms. Armenteros and FPL, including participating in a witnessed meter test. Based on the information, staff sent a letter to Ms. Armenteros on November 12, 2019, stating that it appeared that FPL had not violated any applicable statutes, rules, company tariffs, or Commission orders. Ms. Armenteros did not agree with staff's finding and filed a formal complaint on December 11, 2019. On February 17, 2020, staff sent a letter to Ms. Armenteros requesting any additional information or documentation that might assist the Commission in addressing her complaint. Staff did not receive a response from Ms. Armenteros.

Based on the information provided to staff and discussions with both the Utility and Ms. Armenteros, there is no evidence that FPL back billed Ms. Armenteros incorrectly. Meter tests performed by FPL and Commission staff on meter ACD3449 revealed a registration below the allowable tolerances due to the tampered CT wires. Ms. Armenteros was back billed for 48 months based on the data collected by FPL, which indicated that consumption dropped on September 19, 2014, one of the two CT wires in smart meter ACD3449 had been cut, and consumption increased after the new meter was installed on March 25, 2019. Ms. Armenteros was back billed the 50.17% kWh difference that did not register on the meter due to the meter tampering. Thus, staff recommends that the Commission deny Ms. Armenteros's petition as it does not demonstrate that FPL's back billing of her account violates any statutes, rules, or orders, or that FPL's back billing of 48 months is unreasonable.

³ Pursuant to Rule 25-22.032(3), F.A.C., a customer is afforded protection from disconnection during a complaint process; therefore, "a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff."

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Lherisson)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.